

Center for Medicaid and State Operations/Survey and Certification Group

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DATE: December 16, 2004

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Federal Requirements for the Informal Dispute Resolution (IDR) Process for Nursing Homes

Letter Summary

- States should review their policies regarding the IDR process for Medicare/Medicaid nursing homes in order to determine whether they are consistent with Federal regulations and the State Operations Manual (SOM).
- If necessary, states must revise their policies no later than 60 days after issuance of this memorandum.

The IDR process gives nursing homes one informal opportunity to dispute cited deficiencies after any survey of Federal requirements for participation. The Centers for Medicare & Medicaid Services (CMS) has given flexibility to the states in the manner in which they conduct the IDR process, subject to the Federal requirements outlined in 42 C.F.R. §488.331 and Section 7212 of the SOM. States should review their state policies to assure that they conform to the following minimum Federal requirements:

Availability of the IDR Process - General Provisions and Notification

- For surveys of the Medicare/Medicaid requirements, states must offer skilled nursing facilities, nursing facilities, and dually participating facilities an informal opportunity, at the facility's request, to dispute cited deficiencies upon the facility's receipt of the official Form CMS-2567.
- The IDR process must be in writing so that it is available for review upon request.
- Written description of the state's IDR process must be provided to a facility upon the facility's request.

- Facilities may not use the IDR process to delay the formal imposition of remedies. Failure of the state to complete IDR timely cannot delay the effective date of any enforcement action against the facility.
- IDR is a process for facilities to dispute cited deficiencies. Facilities may not use the IDR process to challenge any other aspect of the survey process, including the:
 - Scope and severity assessments of deficiencies, with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;
 - Remedy(ies) imposed by the enforcing agency;
 - Alleged failure of the survey team to comply with a requirement of the survey process;
 - Alleged inconsistency of the survey team in citing deficiencies among facilities; or the
 - Alleged inadequacy or inaccuracy of the IDR process.
- A facility may request IDR for each survey that cites deficiencies. The following table indicates when IDR may be requested based on the results of a revisit or as a result of the previous IDR outcome.

| Situation | Eligibility for IDR |
|---|--|
| Continuation of same deficiency at revisit | Yes |
| New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of an IDR | Yes |
| New example of deficiency (i.e., new facts, same tag) at revisit or as a result of an IDR | Yes |
| Different tag but same facts at revisit or as a result of an IDR | No, unless the new tag constitutes substandard quality of care |

A second IDR is not offered about the existence of the deficiency(ies) as of the date of the first survey. In other words, a facility may not request a re-review of a previous IDR decision.

- Facilities must be notified of the availability of the IDR process in the letter transmitting the official Form CMS-2567. See Exhibits 139 and 143 in the SOM for model letters. Notification of this process should inform the facility:
 - That it may request the opportunity for IDR, and that if it requests the opportunity, the request must be submitted in writing along with an explanation of the specific deficiencies that are being disputed. The request must be made within the same 10-calendar day period the facility has for submitting an acceptable plan of correction to the surveying entity;

- Of the name, address, and telephone number of the person the facility must contact to request IDR;
- How IDR may be accomplished in that state, e.g., by telephone, in writing, or in a face-to-face meeting; and
- Of the name and/or the position title of the person who will be conducting the IDR, if known.

Actions Taken after the IDR Process

- When a facility is unsuccessful during the process at demonstrating that a deficiency should not have been cited, the surveying entity must notify the facility in writing that it was unsuccessful.
- When a facility is successful during the IDR process at demonstrating that a deficiency should not have been cited:
 - The deficiency citation should be marked “deleted,” signed, and dated by a supervisor of the surveying entity;
 - Any enforcement action(s) imposed solely because of that deficiency citation should be rescinded; and
 - The scope and severity assessment should be adjusted, if necessary, to reflect the outcome of IDR, e.g., elimination of deficiencies.
- The facility has the option to request a clean (new) copy of the Form CMS-2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of the IDR process must be disclosed to the ombudsman in accordance with §7904 of the SOM.
- Deficiencies pending IDR should be entered in the Automated Survey Processing Environment (ASPEN) but will not be posted to the Nursing Home Compare website until the IDR process has been completed.

CMS Authority

- While states may have the option to involve outside persons or entities they believe to be qualified to participate in this process, it is the states, not outside individuals or entities that are responsible for IDR decisions. CMS will look to the states to assure the viability of these decision-making processes, and hold states accountable for them.

- Since CMS has ultimate oversight responsibility relative to a state's performance, it may be appropriate for CMS to examine specific IDR decisions or the overall IDR process to determine whether a state is arriving at a correct result. For dually participating or Medicare-only facilities, IDR findings are recommendations to CMS and, if CMS has reason to disagree with those findings, it may reject the conclusions from IDR and make its own binding determinations of noncompliance.

State Survey Agency Action: States should review their policies regarding the IDR process for Medicare/Medicaid nursing homes, in order to determine whether they are consistent with Federal regulations and the State Operations Manual. If the state does not meet the minimum Federal requirements, the state should revise its policies and procedures accordingly.

Effective Date: The information contained in this memorandum reinforces current policy. The states should review their policies regarding the IDR process for nursing homes to assure consistency with Federal requirements and revise, if necessary, no later than 60 days after issuance of this memorandum.

Training: If the state's IDR process will be revised to conform to the Federal regulations or the SOM, then training may be necessary for nursing home survey and certification staff and their managers.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management